

## REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks.

Applicants thank the Examiner for the teleconference conducted on September 15, 2010 between the Examiner and the undersigned attorney. The Examiner and the undersigned attorney discussed claim 1 in view of the combination of Maliszewski et al. (US Patent no. 6,467,233, hereinafter “Maliszewski”) and Ollgaard (US Patent Publication no. 2003/0147753, hereinafter “Ollgaard”). No agreement was reached in regards to claim 1 and these references.

Claims 1-6, 9, 12, 13, and 16 have been currently amended. No claims are canceled. New claim 17 has been added. No new matter has been added.

Applicants reserve all rights with respect to the applicability of the Doctrine of equivalents.

### **Claim Rejections under 35 U.S.C. §103(a)**

The Examiner rejected claims 1-4, 7, 10 and 12 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski et al. (US Patent no. 6,467,233, hereinafter “Maliszewski”) in view of Ollgaard (US Patent Publication no. 2003/0147753, hereinafter “Ollgaard”).

Claim 1, as amended, recites:

A modular kit for a tower of a wind energy turbine, comprising:

**a first conical tower segment comprising a steel tube having a predetermined length,**

**a second conical tower segment comprising a steel tube having a predetermined length,** wherein the first conical tower segment is to be coupled to the second conical tower segment in an assembled condition, the diameter of the first conical tower segment at a lower end being equal to the diameter of the second conical tower segment at an upper end, and

**a first cylindrical tower segment comprising a single steel tube having a length that selected from a plurality of lengths between a predetermined minimum length and a predetermined maximum length, wherein the second conical tower segment is to be coupled to the first cylindrical tower segment in the assembled condition, and**

wherein the length of the first cylindrical tower segment can be adapted to the necessary height of the tower between its minimum height and its maximum height, the minimum height being the sum of the predetermined lengths of the first and second conical tower segments and the minimum length of the first

cylindrical tower segment, and the maximum height being the sum of the predetermined lengths of the first and second conical tower segments and the maximum length of the first cylindrical tower segment. (Emphasis added).

The Office Action characterizes the segment 12 or 14 in Figure 2 of Maliszewski as being a first conical tower segment and the segment 12 or 14 as being the second conical tower segment. The segment 12 is characterized as being the first variable length cylindrical tower segment.

The Office Action reads as follows.

A first variable-length cylindrical tower segment (one of the four tower segments noted above) comprising a steel tube (column 2 lines 15-18 teach steel construction) having a length that can be varied. (The examiner construes that since Maliszewski discloses towers between 60 and 80 meters are comprised of three sections, the lengths of those sections would need to be variable lengths. For instance, to create a tower with a height of 60 meters, three 20 meter segments would be used, with the three segment lengths adding up to the total length of 60 meters. In order to create an 80 foot tower using three segments, three sections approximately 26.7 meters in length would be used. Since different length tower segments would need to be used to create the towers of Maliszewski, the lengths of the sections would need to be varied, thus, the limitations of the claim as amended are met). (Office Action, 07/20/2010, page 3).

The applicants respectfully disagree with the characterization of the segment 12 or 14 of Maliszewski as being a cylindrical tower segment comprising a single steel tube having a length that is selected from a plurality of lengths between a predetermined minimum length and a predetermined maximum length.

Even though Maliszewski teaches that the tower can range in height from 32 to over 80 meters, nothing in Maliszewski teaches that the segment 12 or 14 is a single steel tube. Nor does Maliszewski teach that the segment 12 or 14 has a length that is selected from a plurality of lengths. In fact, it appears that Maliszewski explicitly teaches that the height of the tower can only be changed by adding additional sections. In particular, Maliszewski teaches that for towers less than 60 meters, two sections are used, namely bottom section 12 and upper section 14. Maliszewski at col. 2, lines 36-38, Figures 1-2. For towers between 60 to 80 meters, three sections are used, namely the bottom, upper, and middle sections (not illustrated), and for the towers over 80 meters, four sections are used, namely the bottom and upper sections, and two additional sections. *Id.* at col. 3, lines 22-26.

The Examiner construes Maliszewski to teach that the segment 12 or 14 would be a first length for a 60m tower and second longer length for a 80m tower.

However, Maliszewski does not teach that any sections are varied in height, or that the segment 12 or 14 is varied in height, but rather that the height of the tower is changed by adding additional sections. Thus, the segment 12 or 14 is not a single tube having a length that is selected from a plurality of lengths.

The segment 12 includes a **plurality of steel tubes** (rings 22, 24, 26, 28, 30, 32, 34, 36, and 56) rather than a **single steel tube** as required by amended claim 1. Additionally, the segments 12 and 14 are primarily cylindrical with one conical ring in each. Thus, neither segment 12 or 14 can be characterized as a **conical** segment.

As such, Maliszewski fails to teach the limitations “a first conical tower segment comprising a steel tube having a predetermined length, a second conical tower segment comprising a steel tube having a predetermined length” and “a first cylindrical tower segment comprising a single steel tube having a length that is selected from a plurality of lengths between a predetermined minimum length and a predetermined maximum length, wherein the second conical tower segment is to be coupled to the first cylindrical tower segment in an assembled condition” as recited in amended claim 1.

It is respectfully submitted that Ollgaard fails to cure the deficiencies of Maliszewski. Ollgaard teaches a wind turbine having conical subsections 11-14 that are coupled together in an assembled condition.

Ollgaard fails to teach or suggest the limitations “a first cylindrical tower segment comprising a single steel tube having a length that is selected from a plurality of lengths between a predetermined minimum length and a predetermined maximum length, wherein the second conical tower segment is to be coupled to the first cylindrical tower segment in an assembled condition” as recited in amended claim 1.

It is respectfully submitted that Maliszewski does not suggest a combination with Ollgaard, and Ollgaard does not suggest a combination with Maliszewski because Maliszewski teaches away from such combination. The Examiner’s proposed modification would replace the cylindrical/conical rings of segments 12 and 14 with all conical portions as taught by Ollgaard in order to make the tower stronger by creating a wider and heavier base section. However, Maliszewski discloses that segments 12 and 14

each have 7 cylinder rings. The Examiner's proposed modification would replace these 7 rings in each segment with conical transition rings (e.g., 56, 58) resulting in 14 conical rings for an upper portion of a tower and then another segment with 7 more cylinder rings having a diameter as wide as the widest conical ring. This modification would dramatically increase the base width of the tower. Thus, the tower would become dramatically more heavy, more expensive to manufacture, more expensive to transport, and more expensive to assemble. The Examiner's proposed modification would frustrate the purpose of Maliszewski – placing wind turbine generators on towers which are easy and economical to erect. Additionally, Maliszewski appears to explicitly teach away from segments of conical sections being welded together as taught in Ollgaard. (Maliszewski, background). It would be impermissible hindsight to combine Maliszewski with Ollgaard based on applicants' own disclosure.

Furthermore, even if Maliszewski and Ollgaard were combined, such a combination would lack the limitations “a first cylindrical tower segment comprising a single steel tube having a length that is selected from a plurality of lengths between a predetermined minimum length and a predetermined maximum length, wherein the second conical tower segment is to be coupled to the first cylindrical tower segment in an assembled condition” as recited in amended claim 1.

Therefore, in view of the above distinction, neither Maliszewski nor Ollgaard, individually or in combination, disclose each and every limitation of amended claim 1. As such, amended claim 1 is not rendered obvious by Maliszewski in view of Ollgaard under 35 U.S.C. § 103(a).

It is submitted that claims 2-4, 7, 10, 12, and 14 and new claim 17 are not rendered obvious by Maliszewski in view of Ollgaard under 35 U.S.C. § 103(a) given that claims 2-4, 7, 10, 12 and 14 and new claim 17 depend from and include the limitations of one of the corresponding independent claims 1 and 13.

Claims 5, 6, 7, 10 and 13-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski in view Ollgaard as applied to claims 1 and 13 above, and further in view of Tadros (U.S. Publication No. 2003/0000165, hereinafter “Tadros”).

Independent claim 13 contains similar limitations but not identical compared to independent claim 1. As discussed above, Maliszewski and Ollgaard fail to teach or suggest all of the features of the independent claim 1. Tadros does not cure those deficiencies.

For similar reasons, independent claim 13 is not rendered obvious by Maliszewski in view of Ollgaard in view of Tadros under 35 U.S.C. § 103(a).

Claims 5, 6, 7, 10, and 14-16 directly or indirectly depend from independent claims 1 or 13. Thus, dependent claims 5, 6, 7, 10, and 14-16 are not rendered obvious by Maliszewski in view of Ollgaard in view of Tadros under 35 U.S.C. § 103(a).

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski in view of Ollgaard and further in view of Tadros and further in view of Farber (U.S. Patent No. 5,513,477, hereinafter “Farber”).

Claims 8 and 9 directly or indirectly depend from the independent claim 1. As discussed above, Maliszewski, Ollgaard, and Tadros fail to teach or suggest all of the features of claim 1. Farber does not cure those deficiencies. Accordingly, Applicants request that rejection of claims 8 and 11 under 35 U.S.C. §103(a) be withdrawn.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski in view of Ollgaard and further in view of Farber. Claim 11 directly or indirectly depends from the independent claim 1. As discussed above, Maliszewski and Ollgaard fail to teach or suggest all of the features of claim 1. Farber does not cure those deficiencies. Accordingly, Applicants request that the rejection of claim 11 under 35 U.S.C. §103(a) be withdrawn.

## CONCLUSION

It is respectfully submitted that in view of the amendment and remarks set forth herein, the rejections have been overcome. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Jeremy A. Schweigert at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

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